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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,767	02/28/2005	Franz-Josef Dietzen	12810-00034-US	9954
30678 7590 04/30/2009 CONNOLLY BOVE LODGE & HUTZ LLP 1875 EYE STREET, N.W. SUITE 1100 WASHINGTON, DC 20006				
EXAMINER				
ZEMEL, IRINA SOPHIA				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
04/30/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/525,767

Applicant(s)

DIETZEN ET AL.

Examiner

Irina S. Zemel

Art Unit

1796

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3, 4, 6, 8-10, 13, 15 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, 4, 6, 8-10, 13, 15 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-4,6, 8-10, 14, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patents 4,990,542 and 5,317,033 (of record) both to Monani, et al., (hereinafter "Motani '542" and Motani "033") in combination with either US Patent 4,818,451 to Arai et al., (hereinafter "Arai"), or US Patent 4,912,140 to Tusim, (hereinafter "Tusim"), and further in combination with EP 0915127 to BASf or WO 98/51735 to BASf both of record, (hereinafter "BASf EP" and "BASf WO") and further in view of US Patent 4,585,825 to Wesselmann, (hereinafter "Wesselmann").

The rejection stands as per reasons previously applied to claims 7 and 8, (claim 7 is now cancelled). Insofar as the specifically claimed molecular weights of the two fractions, i.e., Mw of between from 150,00 to 250, 000 and 280,000 and 500,00, the Wesselman reference teaches those ranges for the intermediated and high molecular weight fraction as per column 7, lines 42-54 and illustrative examples 1-3.

Therefore, the invention as claimed is still considered to have been obvious from the combined teachings of the cited references.

Response to Arguments

Applicant's arguments filed 3-2-2009 have been fully considered but they are not persuasive. The applicants argue that the Wesselmann reference fails to suggest a process for producing foam beads, as claimed, and does not even suggest a foam

board extrusion process. As such, a skilled artisan would have no reasonable expectation of success that the weight distribution suggested in Wesselmann would confer any advantages to the foam board extrusion process of Montani '033 and Montani '542. This is not found persuasive for at least the reasons that improvements that are achieved by using bi-modal polystyrene in mechanical properties, such as improved heat resistance, are reasonably expected to be realized in ANY process that uses such polystyrene and in any final product based on bi-modal polystyrene.

The applicants further argue that "the proposed modification would render Wesselmann unsuitable for its intended purpose because Wesselmann suggests, at col. 3, lines 3-7, that the polymer resin compositions suggested therein have improved melt flow properties that make them suitable for injection molding compositions. By foaming the compositions of Wesselmann, it would no longer be possible to inject the resin melts into a mold." This argument is not understood and is not convincing at least for the reasons that the examiner never suggested to modify the Wesselmann reference is any way, rather it is the modification of the primary reference (that teach foam extrusion process) that was proposed by using the polystyrene disclosed in Wesselmann. Thus, no suggestion to modify any of the reference so as to make them unsuitable for their intended purpose was ever proposed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irina S. Zemel whose telephone number is (571)272-0577. The examiner can normally be reached on Monday-Friday 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on (571)272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Irina S. Zemel/
Primary Examiner, Art Unit 1796

Irina S. Zemel
Primary Examiner
Art Unit 1796

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